



## **RESOLUTION**

**AUTHORIZING THE MAYOR TO EXECUTE AN “AVIGATION” EASEMENT TO  
THE NASHUA AIRPORT AUTHORITY FOR ACCESS BY AIRCRAFT IN AND  
THROUGH THE AIRSPACE ABOVE CITY-OWNED CONSERVATION LAND  
KNOWN AS THE NORTHWEST SANCTUARY**

### ***CITY OF NASHUA***

*In the Year Two Thousand and Five*

**RESOLVED** by the Board of Aldermen of the City of Nashua that the Mayor is authorized to execute an avigation easement in substantially the attached form for access by aircraft in and through the airspace above the City-owned Northwest Sanctuary conversation land, as shown on the attached plan entitled “Schematic Plan of VAR Surface and Runway Protection Zone” prepared by Gale Associates, Inc., dated June 9, 2005. This authority is conditional on assent to the terms of the easement by the State of New Hampshire DES and LCHIP.

### **AVIGATION EASEMENT DEED**

Whereas, City of Nashua, New Hampshire, hereinafter called the Grantors, are the owners in fee of a certain parcel of land situated off Northwest Boulevard in the City of Nashua, County of Hillsborough, State of New Hampshire, attached hereto as Exhibit 1 and described in a deed from Westwood Park, LLC, to the City of Nashua and recorded in the Hillsborough County Registry of Deeds in Book 6516 Page 0691, hereinafter called "Grantors' property", in consideration of the sum of one dollar (\$1) and valuable consideration, which is hereby acknowledged, the Grantors, for themselves, their heirs, administrators, executors, successors and assigns, do hereby grant, bargain, sell, and convey unto City of Nashua acting through the Nashua Airport Authority, a Municipal corporation with an address of 93 Perimeter Road, Nashua, New Hampshire 03063, hereinafter called the Grantee, its successors and assigns, for the use and benefit of the public, with QUITCLAIM COVENANTS, an easement and right of way, appurtenant to Boire Field, also known as Nashua Airport, for the unobstructed use and passage of all types of aircraft, as hereinafter defined, in and through the airspace above Grantors' property above an imaginary plane rising and extending in a generally northwesterly direction over Grantors' property, said imaginary plane more particularly described as follows:

#### **VAR APPROACH SURFACE TO RUNWAY 14:**

An imaginary plane, centered horizontally over the extended centerline of existing and future Runway 14-32, said extended runway centerline being defined as a line centered on the existing or future Runway 14-32 pavement and extending both northwesterly and southeasterly from the runway ends. Said centerline is at an approximate true bearing of north fifty-seven degrees twenty-four minutes west (N 57°24' W). This imaginary plane has a beginning width of eight hundred (800) feet centered over and perpendicular to said extended runway centerline at a horizontal distance of two hundred (200) feet along said extended runway centerline in a northwesterly direction from, and at the elevation of, the Runway 14 threshold. This imaginary plane widens to an ending width of three thousand five hundred sixty (3,560) feet centered over and perpendicular to said extended runway centerline at a horizontal distance of ten thousand (10,000) feet from the beginning of said imaginary plane. The surface of the imaginary plane extends upward in a generally northwesterly direction over the Grantors' property from its beginning elevation as previously stated at a rate of one (1) foot vertically for each thirty-four (34) feet horizontally for the full length of the imaginary plane as outlined on the attached map (Exhibit 1).

Said easement shall be appurtenant to and for the benefit of the real property now known as Boire Field including any additions thereto wherever located, hereafter made by Grantee or its successors and assigns, guests, and invitees, including any and all persons, firms, or corporations operating aircraft to or from said Boire Field

Said easement and burden, together with all things which may be alleged to be incident to or resulting from the use and enjoyment of said easement, including, but not limited to the right to cause in all airspace above or in the vicinity of the surface of Grantors' property such noise, vibrations, fumes, deposits of dust or other particulate matter, fuel particles (which are incidental to the normal operation of said aircraft), fear, interference with sleep and communication and any and all other effects that may be alleged to be incident to or caused by the normal operation of aircraft over or in the vicinity of Grantors' property or in landing at or taking off from, or operating at or on said Boire Field is hereby granted; and Grantors do hereby fully waive, remise, and release any right or cause of action which they may now have or which they may have in the future against Grantee, its successor and assigns, due to such noise, vibrations, fumes, dust, fuel particles and all other effects that may be caused or may have been caused by the normal operation of aircraft landing at, or taking off from, or operating at or on, or performing approaches to said Boire Field due to such noise, vibrations, fumes, deposits of dust or other particulate matter, fuel particles (which are incidental to the normal operation of said aircraft).

As used herein, the term "aircraft" shall mean any and all types of aircraft, whether now in existence or hereafter manufactured and developed, to include, but not limited to, jet aircraft, propeller driven aircraft, civil aircraft, military aircraft, commercial aircraft, helicopters, and all types of aircraft or vehicles now in existence or hereafter developed, regardless of existing or future noise levels, for the purpose of transporting persons or property through the air, by whoever owned or operated.

Said easement and right-of-way hereby grants to the Grantee the continuing right and duty to prevent the erection or growth upon Grantors' property of any building, structure, tree, bush, shrub, or other natural or man-made objects, penetrating or extending into the airspace at or above the aforesaid imaginary plane, or, in the case of vegetation, near penetrations that reach a height that is within 10 feet of the imaginary plane, and to remove penetrations and near penetrations from said airspace, or in the case of individual vegetative objects to remove in their entirety, or at the sole option of the Grantee, as an alternative, to mark and light as obstructions to air navigation, any such building, structure, tree, brush, shrub, or other natural or man-made objects now upon, or which in the future may be upon Grantors' property, together with the right of ingress to, egress from, and passage over Grantors' property for the above purpose. Said Grantee shall follow Forestry Best Management Practices, and shall limit any obstruction removal to the limits of the VAR approach surface to Runway 14 and the Runway Protection Zone and shall submit application for consideration and approval to the Nashua Conservation Commission for all cutting and tree removal within areas defined as wetlands. The Grantee shall be responsible for maintaining clear approach, transitional, and other airspace surfaces and is the responsible party for removing vegetation/tree penetrations now and in the future ever where an aviation easement is in effect. The existing vegetation/trees that grow into the protected airspace are considered to be beyond the control of the Grantor and are not Grantor's

responsibility to remove. Grantor shall be responsible for removing anything that it builds into the protected airspace and any new plantings that penetrate the protected surfaces. Refueling shall not be allowed on site except when absolutely necessary. If refueling on site is absolutely necessary, Grantee shall not allow fuel to seep into the ground when refueling and further agrees to take all necessary containment measures when refueling.

The Grantors, for themselves, their heirs, administrators, executors, successors, and assigns, do hereby agree that for and during the life of said aviation easement, they will not hereafter erect, permit the erection, or permit or suffer to remain upon Grantors' property any structure in the Runway Protection Zone that is an airport hazard or airspace obstruction or which might create glare or misleading lights or lead to the construction of residences, fuel handling and storage facilities, or smoke generating activities; and the grantors, for themselves, their heirs, administrators, executors, successors, and assigns, further agree they will not permit places of public assembly upon Grantors' property, such as, churches, schools, office buildings, shopping centers, restaurants, child care facilities, and stadiums, said Runway Protection Zone is more particularly described as follows:

#### RUNWAY PROTECTION ZONE:

The Runway Protection Zone is trapezoidal in shape and centered about said extended runway centerline. The Runway Protection Zone has a beginning width of one thousand (1,000) feet centered over and perpendicular to said extended runway centerline at a horizontal distance of two hundred (200) feet along said extended runway centerline in a northwesterly direction from the Runway 14 threshold. This Runway Protection Zone widens to an ending width of one thousand seven hundred fifty (1,750) feet centered over and perpendicular to said extended runway centerline at a horizontal distance of two thousand five hundred (2,500) feet from the beginning of said Runway Protection Zone. The surface of the Runway Protection Zone follows the contours of the ground as outlined on the attached map (Exhibit 1).

And for the consideration hereinabove set forth, the Grantors, for themselves, their heirs, administrators, executors, successors, and assigns, do hereby agree that for and during the life of said easement and right of way, they will not hereafter erect or permit the erection of, or permit or suffer to remain upon Grantors' property any building, structure, planted tree or other object extending into the airspace above the aforesaid VAR approach surface to Runway 14, and that they shall not hereafter use or permit or suffer the use of Grantors' property in such a manner as to create electrical interference with radio communication between any installation upon said airport and aircraft, or as to make it difficult for flyers to distinguish between airport lights and others, or to permit any use of the Grantors' land that causes a discharge of fumes, dust or smoke so as to impair visibility in the vicinity of the airport or as otherwise to endanger the landing, taking off or maneuvering of aircraft. Grantors furthermore waive all damages and claims for damages caused, or alleged to be caused, by or incidental to such activities.

To have and to hold said easement and right of way, and all rights appertaining thereto unto the Grantee, its successors, and assigns, until said Boire Field shall be abandoned and shall cease to be used for public airport purposes.

Grantors further covenant that they will not hereafter erect, or permit or suffer to remain upon the premises any building, structure, planted tree, bush, shrub, or other object contrary to the provisions of this deed as set forth above, and that they shall not hereafter use or permit or suffer the use of the premises in such a manner as to create electrical interference with radio or other communication between any installation upon said airport and aircraft, or as to make it difficult for those operating aircraft to distinguish between airport lights and others, or as to impair visibility in the vicinity of the airport, or as otherwise to endanger the landing, taking off, or maneuvering of aircraft, it being understood and agreed that the aforesaid covenants and agreements shall run with the land.

This Avigation Easement is subject to and shall in no way be inconsistent with, or violate any and all covenants or restrictions as set forth in the original deed from Westwood Park, LLC to the City of Nashua as recorded in the Hillsborough County Registry of Deeds at Book 6516, Page 0691.

Any and all restrictions as set forth in the original Warranty Deed from Westwood Park, LLC to the City of Nashua and recorded in the Hillsborough County Registry of Deeds in Book 6516, Page 0691 and specifically, but not limited to, the restrictions imposed solely at the request of the City of Nashua in conjunction with the State of New Hampshire, Department of Environmental Services, Water Supply Land Grant Program and Land and Community Heritage Investment Program, which restrictions are incorporated by reference herein, and which restrictions the Grantee herein agrees to comply with.

IN WITNESS WHEREOF, the Grantors have hereunto set their hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

SIGNED, SEALED, and DELIVERED in the presence of:

\_\_\_\_\_

\_\_\_\_\_  
Grantor(s) (SEAL)

**ACKNOWLEDGMENT**

**STATE OF NEW HAMPSHIRE**  
**COUNTY OF HILLSBOROUGH, ss.**

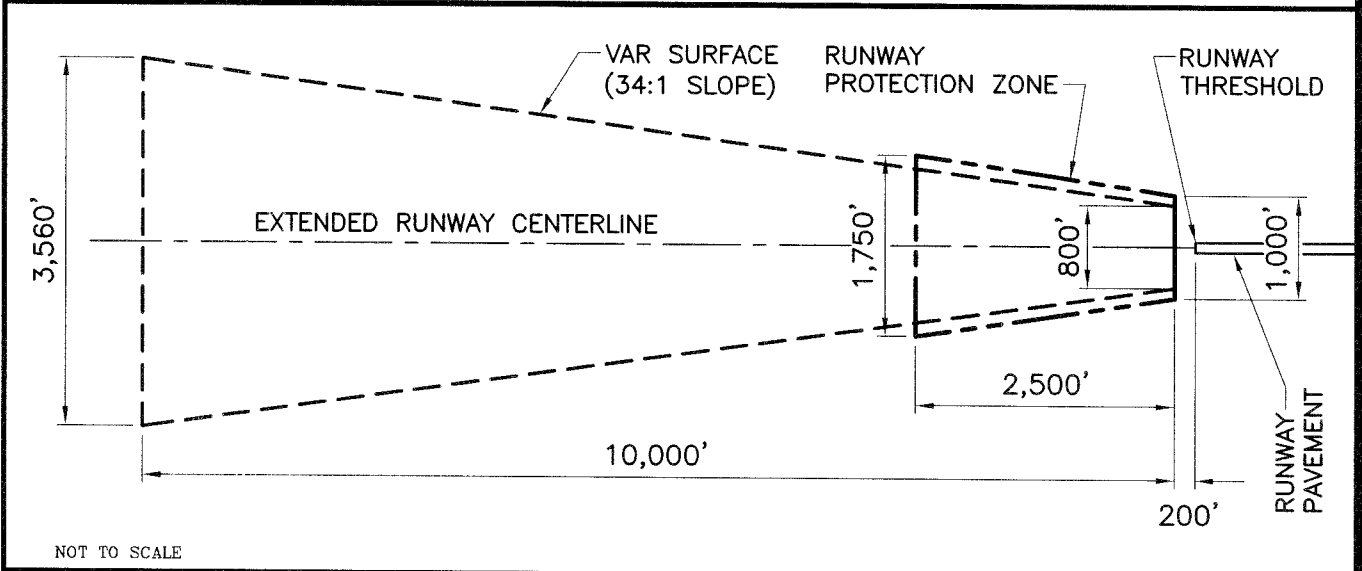
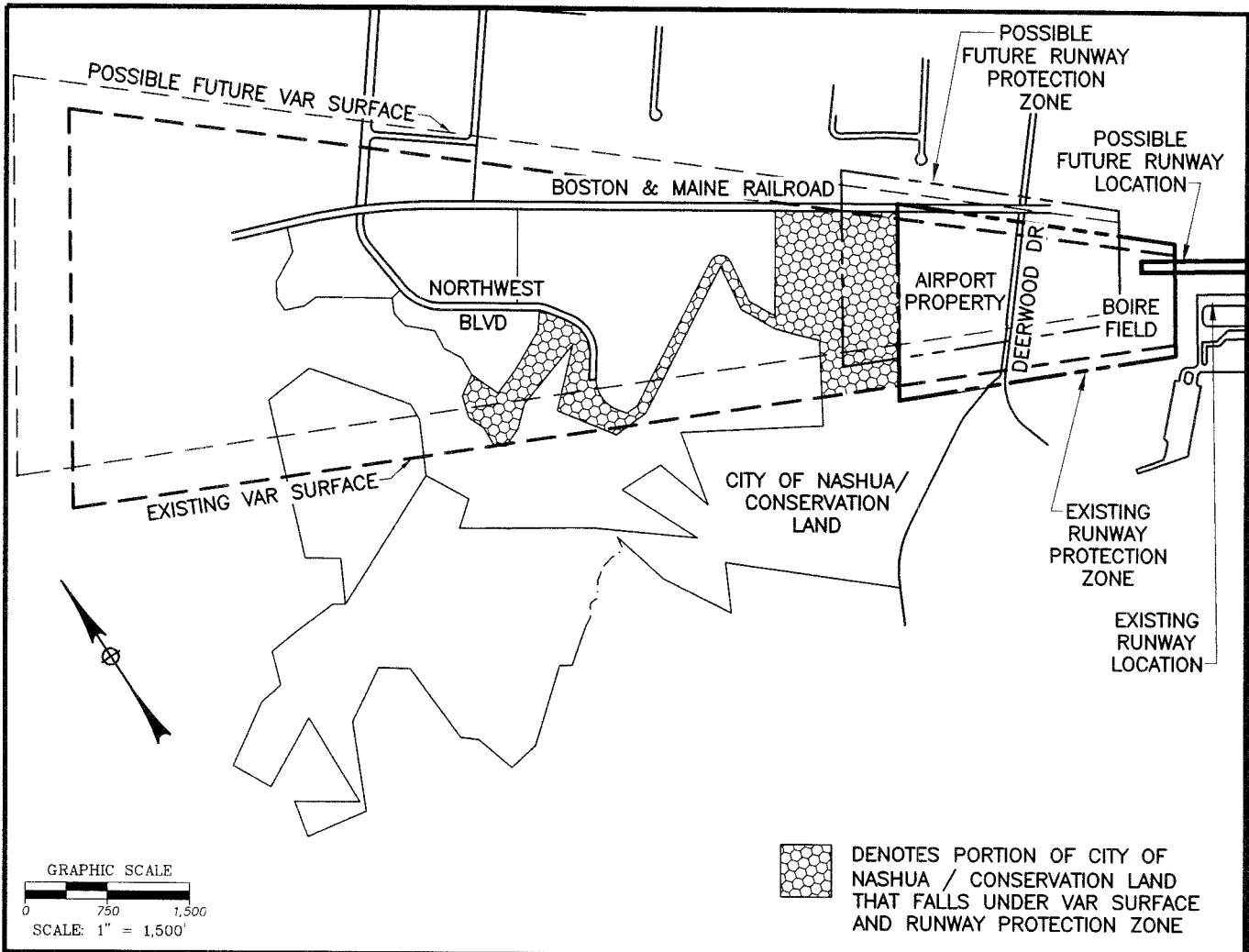
**BE IT REMEMBERED.** that on this \_\_\_\_\_ day of \_\_\_\_\_, 2005, before me, the undersigned, a [Notary Public][Attorney at Law] in and for the County and State aforesaid, came \_\_\_\_\_, who are personally known to me to be the same persons who executed the within instrument of writing and such persons duly acknowledged the execution of the same.

**IN WITNESS WHEREOF.** I have hereunto set my hand and affixed my seal, the day and year last above written.

\_\_\_\_\_  
[Notary Public][Attorney at Law]

\_\_\_\_\_  
Printed Name

My commission expires \_\_\_\_\_



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## SCHEMATIC PLAN OF VAR SURFACE AND RUNWAY PROTECTION ZONE

### OBSTRUCTION REMOVAL IN RUNWAY 14 APPROACH AND FEASIBILITY STUDY AIP NO. 3-33-0012-26

| PROJ. NO: | DRAWN | REVIEWED | CADD FILE       |
|-----------|-------|----------|-----------------|
| 775911    | JAT   | CLN      | 775911-EXHIBIT1 |

DATE: JUNE 9, 2005

SCALE: AS SHOWN

REVISION:

# EXHIBIT 1

1 OF 1